<u>REMARKS</u>

In the outstanding Office Action, the Examiner contends that Applicant's previous response is allegedly not responsive to the previous Office Action.

In particular, the Examiner asserts that the previous Amendment was not fully responsive to the prior office action since in the response filed February 7, 2007, Applicant elected to prosecute species A which was directed to a device having a fourth means that judges the deviation possibility according to frontal distance of the preceding distance from your own vehicle. However, the Amendment filed August 1, 2007, did not read on the elected species since the elected fourth means is not present in claim 29. Pending claim 29 is reproduced below:

Claim 29   A vehicle surroundings monitoring apparatus comprising:

first means for detecting at least solid object information ahead of an own vehicle;

second means for estimating a travel path of the own vehicle;

third means for recognizing a preceding vehicle traveling in front of the travel path of the own vehicle based on the solid object information;

fourth means for judging whether there is any forward traveling object, which travels in the same direction as the own vehicle, other than the preceding vehicle based on the solid object information;

fifth means for setting a judging counter expressing numerically the possibility of evacuation of the preceding vehicle, the judging counter set in response to a lengthwise distance (Z) of the preceding vehicle from the own vehicle a widthwise distance (CAL) of the preceding vehicle has been recognized;

sixth means for increasing the judging counter in a case where any forward traveling object other than the preceding vehicle has been judged;

seventh means for judging whether the increased judging
counter is larger than a threshold value; and

eighth means for judging that the preceding vehicle is not
traveling in front of the travel path of the own vehicle in a case where
the increased judging counter is larger than the threshold value and
outputting a signal.

Applicant respectfully traverses the Examiner's conclusion that Applicant's claim 29

does not read on the elected species. Pending claim 29 (reproduced above) is based on original

claim 23 that was introduced in an amendment dated June 1, 2006. To assist the Examiner, original

claim 23 is reproduced below:

23.   (New)   A vehicle surroundings monitoring apparatus
comprising:

frontal information detecting means for detecting at
least solid object information ahead of an own vehicle;

traveling path estimating means for estimating a
traveling path of the own vehicle;

preceding vehicle recognizing means for recognizing a
preceding vehicle traveling in front of the own vehicle based on the
solid object information;

forward-traveling object judging means for judging
whether there is any forward-traveling object, which travels in the
same direction as the own vehicle, other than the preceding vehicle
based on the solid object information;

first judgment counter setting means for setting a
judgment counter in response to a distance in the traveling direction
between the preceding vehicle and the own vehicle and a state of
deviation of the preceding vehicle from the traveling path of the own
vehicle, in a case where the preceding vehicle has been recognized, in
order to judge the evacuation of the preceding vehicle;

judgment counter correcting means for correcting the
judgment counter towards an evacuation side as the preceding vehicle
in a case where any forward-traveling object other than the preceding
vehicle has been judged; and

preceding vehicle evacuation judging means for
comparing the corrected judgment counter value and a preset value to
judge the evacuation of the preceding vehicle.

On October 6, 2006, the Examiner issued an election requirement in which Applicant was required to elect Species A or Species B.

On November 2, 2006, Applicant submitted a response electing Species A and contended that claim 23 was readable on elected Species A.

On January 25, 2007, the Examiner issued yet another election requirement and Applicant was required to elect from Species A-C.

On February 7, 2007, Applicant elected Species A and contended claim 23, and others, is readable on elected Species A.

The Examiner then issued an Office Action on May 2, 2007, in which the Examiner examined claims 11-14 and 20-24 on the merits as being readable on the elected species. The Examiner rejected claim 23 under 35 U.S.C. 112 and consequently, the Examiner has admitted that claim 23 is readable on elected Species A by formally acting on the merits of and examining claim 23.

In response to the May 2, 2007 Office Action, Applicant submitted an amendment that presented claim 29 in order to overcome the rejection of claim 23 and to clarify the subject matter of the invention. If the Examiner compares original claim 23 and pending claim 29, the Examiner will see that claim 29 includes content (subject matter) from claim 23. Since the Examiner did not refute Applicant's contention that claim 23 was readable on elected Species A and instead examined claim 23 on the merits, and claim 29 is simply a rewritten version of claim 23 that includes the subject matter of claim 23, the Examiner is bound to the previous admission that claim 23 is readable on elected Species A. The treatment of pending claim 29 should therefore be no different then the treatment of original claim 23 (i.e., examination of both on the merits).

On this basis, Applicant respectfully submits that pending claim 29 is readable on elected Species A and therefore, should be examined as such.

Applicant respectfully requests reconsideration and examination of all of the pending claims.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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